UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,003	07/30/2003	Scott F. Watson	038.P006	2312

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EXAMINER
BUI, KIEU OANH T

ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _05 December 2007_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-47_ is/are pending in the application.
  4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-47_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  a) ☐ All   b) ☐ Some * c) ☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
  Paper No(s)/Mail Date _09/06/2007_.
4) ☐ Interview Summary (PTO-413)
  Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1.   In view of the Appeal Brief filed on 12/05/2007, PROSECUTION IS HEREBY

REOPENED. The new non final office action set forth below.

To avoid abandonment of the application, appellant must exercise one of the

following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply

under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed

by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and

appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in

37 CFR 41.20 have been increased since they were previously paid, then appellant must

pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by

signing below:

SPE John Miller.

/John W. Miller/

Supervisory Patent Examiner, Art Unit 2623

Remark

2.   Claims 48-106 have been previously cancelled in the amendment dated

09/08/2006; and claims 1-47 are pending for reconsideration.

Response to Arguments

3.   Applicant's arguments with respect to claims 1-47 have been considered but are

moot in view of the new ground(s) of rejection.

Claim Objections

4.   **Claim 26** is objected to because of the following informalities: --said client

process capable of operating in a user – does not make sense; and it should be --said

client process capable of operating in a user's device -- instead. Appropriate correction is

required.

       Claim 43 is objected to because of the following informalities: on page 24 of

claim index: -- where said asset and said content stream a represented -- ; it should be --

where said asset **list** and said content stream **are** represented --. Appropriate correction is

required.

       Claim 44 is objected to because of the following informalities: --at least one of at

least one of -- appeared twice therein (in the last paragraph, after wherein said

predetermined contraint comprises --). Appropriate correction is required.

Claim 45 is objected to because of the following informalities: --at a client – is loosely used and it does not make sense; it should be –at a client device or at a client computer. Appropriate correction is required.

Claim Rejections - 35 USC 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Rhoads et al. (U.S. Patent 6,442,285 B2).

Regarding claim 1, Rhoads discloses "a method for delivering an asset over a network" (Fig. 1 and col. 3/line 61 to col. 4/line 14 as the music is delivered over the internet to consumers) comprising: "supplying an asset list by a content provider over the network to a user device, said user device including a client process" (col. 25/line 50 to col. 26/line 7 as client process is a computer process of client computer connected to the user device; and an asset list is the list of available media or music delivered to the user for downloading, i.e., refer to col. 8/line 49 to col. 9/line 25 as the user has a memory includes a data structure that serves as a look up table for searching and indexing music songs in the user's online music library); "and delivering the asset, corresponding to the asset list, over the network to the user device when a predetermined constraint is

satisfied" (col. 9/line 45 to col. 10/line 21 as an example for delivering of ordering music based on the user's constraint or authorization and/or based on some other constraints, see col. 13/lines 35-52).

As for claim 2, Rhodes discloses "wherein the asset is at least one of an audio content, a video content, a text content, a right to use license or a multimedia file" (col. 8/line 49 to col. 9/line 25 for audio and text data; and col. 12/line 59 to col. 13/line 11 for video and games etc.).

As for claim 3, Rhodes further discloses "wherein the asset list is generated by a request from the user" (col. 8/line 49 to col. 9/line 25 as the user requests and downloads music over the internet to their own device and the device has a memory includes a data structure that serves as a look up table for searching and indexing music songs in the user's online music library, which suggests that the user generates the asset list to the provider).

As for claim 4, Rhodes further discloses "including accessing a content web site of a content provider" (refer to col. 16/line 32 to col. 17/line 17 for an example of the user accesses a content web site using hypertext link or URL for downloading the content to the user's device or col. 23/lines 43-50 for another example).

As for claim 5, Rhodes discloses "wherein the predetermined constraint is at least one of the user device being idle, the network Quality of Service (QOS), or the bandwidth usage being below a predetermined operating level" (col. 21/line 50 to col. 22/line 6 for QoS of content provider addressed).

As for claim 6, Rhodes discloses "wherein the predetermined constraint is at least one of the user device CPU usage, or memory usage in the user device being below

predetermined operating levels" (col. 13/lines 35-45 for quality issue of the user device addressed).

As for claim 7, Rhodes discloses "wherein the client initiates the delivery of the asset, from the content provider, over the network to the user device" (col. 19/lines 15-40 as the content is delivered from the server to the user device, i.e., a computer or set top box, or television, audio appliances etc. according to the user's request or pay-for-content).

As for claim 8, Rhodes further discloses "wherein the asset is stored on a local cache" (col. 8/lines 38-48 as the data can be stored in memory or hard disk at the user's residence).

As for claim 9, Rhodes further discloses "comprising presenting the stored asset in conjunction with real time content, said real time content provided by the content provider" (col. 12/lines 47-58 for live events can also be recorded with a (hyper) link).

As for claim 10, Rhodes discloses "wherein the time of day is included in the predetermined constraint" (col. 9/lines 37-45 as the user can specify which time of the day to upload or update new content via the internet).

As for claim 11, Rhodes further discloses "determining at least one parameter from the user device CPU usage, the bandwidth usage, the local cache usage, and a user device activity timer" (refer to claims 6 & 8).

As for claim 12, Rhodes further suggests "comprising presenting a substitute asset in conjunction with real time content from the content provider, in the event that the asset is unavailable at the user" (col. 12/line 47 to col. 13/line 12 for the user has more option

to access to promo clips, so that the user has more choice to have alternative content or option if one is unavailable).

Regarding claims 13-25, these claims for "a method for presenting to an user a continuous and uninterrupted stream of content over the network, the method comprising: supplying an asset list over the network to a client process, said client process operating in a user device; delivering an asset, from a remote location, over the network to the user device if a predetermined constraint is satisfied, wherein the asset list comprises at least an indication of said remote location (user interaction or user's request, see col. 16/line 51 to col. 17/line 17); and integrating the delivered asset with a content stream being received by the user device from the remote location over the network" are rejected for the reasons given in the scope of claims 1-12 with media streams of content delivered over the Internet to the remote user/client (col. 25/line 25 to col. 26/line 56), not limited to the cited paragraphs above, but also to the entire disclosure of Rhodes.

As for claims 26-42, these claims for "a system for presenting content over a network, the system comprising: an asset list capable of being made available by a content provider over the Internet to a client process (col. 25/lines 25-61 for HTML, IP addresses of the Internet), said client process capable of operating in a user('s device); an asset, made available from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location" are rejected for the reasons given in the scope of claims 1-12 with media streams of content delivered over the Internet to the remote client/user (col. 25/line 25 to col. 26/line 56), not limited to the cited paragraphs above, but also to the entire disclosure of Rhodes.

Regarding claim 43, Rhodes discloses "a method for presenting a stream of content over a network, the method comprising: supplying an asset list by a content provider over said network to a client process, said client process operating on a user device; delivering an asset, from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and integrating the delivered asset with a content stream being received by said user device from said remote location over the network; wherein said asset and said content stream are represented" (refer to claims 13-25 as noted above).

Regarding claim 44, Rhodes discloses "a system for receiving an asset over a network, the system comprising: an asset list to be made available by a content provider over said network to a client process, said client process operating in a user device; an asset, to be made available from a remote location, over said network to said user device if a predetermined constraint is satisfied, wherein said asset list comprises at least an indication of said remote location; and an integrator tool for integrating the asset with a content stream being received by the user device from the remote location over said network, wherein said predetermined constraint includes at least one of said user device being idle, the bandwidth usage being below a predetermined operating level, the time of day, the user device CPU usage, or memory usage being below predetermined operating levels" are rejected for the reasons given in the scope of claims 1-12 with media streams of content delivered over the Internet to the remote client/user

(col. 25/line 25 to col. 26/line 56) not limited to the cited paragraphs above, but also to the entire disclosure of Rhodes.

As for claim 45, Rhodes discloses a method for receiving an asset over a network (Fig. 1 and col. 3/line 61 to col. 4/line 14 as the music is delivered over the internet to consumers), comprising: delivering an asset list provide by a content provider over said network at a client (col. 25/line 50 to col. 26/line 7 as client process is a computer process of client computer connected to the user device; and an asset list is the list of available media or music delivered to the user for downloading, i.e., refer to col. 8/line 49 to col. 9/line 25 as the user has a memory includes a data structure that serves as a look up table for searching and indexing music songs in the user's online music library); said client operating in a user device; and receiving said asset, corresponding to at least a portion of said asset list, over said network at user device if a predetermined constraint is satisfied (col. 9/line 45 to col. 10/line 21 as an example for delivering of ordering music based on the user's constraint or authorization and/or based on some other constraints, see col. 13/lines 35-52); wherein said predetermined constraint is at least one of said user device being idle, the network Quality of Service (QOS), the network bandwidth usage being below a predetermined operating level, the user device CPU usage, or memory usage of said user device being below operating levels (col. 21/line 50 to col. 22/line 6 for QoS of content provider addressed; and col. 13/lines 35-45 for quality issue of the user device addressed).

As for claim 46, Rhodes discloses "a method for providing a home media library to a user over a network, the method comprising: supplying an asset list by a content provider over the network to a set-top box, the set-top box including a client process

which manages the delivery of assets; and delivering an asset, from a remote location, over the network to the set-top box if a predetermined constraint is satisfied, as indicated by said client process wherein said asset list comprises at least an indication of said remote location" (refer to claims 1 and 13 with a set top box is included as one of the user devices, col. 19/lines 30-40).

As for claim 47, Rhodes teaches a method of receiving media assets (Fig. 1 and col. 3/line 61 to col. 4/line 14 as the music is delivered over the internet to consumers) at a set-top box for storage and subsequent viewing (with a set top box is included as one of the user devices, col. 19/lines 31-40), the method comprising the steps of:

receiving a media asset list from a content provider on said set top box, said media asset list comprising a list of media assets to be downloaded and information about the location of each of the media assets; running a client process on said set top box, wherein said client process is capable of reading said media asset list to determine what media assets to transfer to the set top box and wherein said client process is further capable of managing delivery of digital media assets based at least in part on predetermined constraints (See col. 23/ lines 51-65 for the address location, and col. 25/line 50 to col. 26/line 7 as client process is a computer process of client computer connected to the user device; and an asset list is the list of available media or music delivered to the user for downloading, i.e., refer to col. 8/line 49 to col. 9/line 25 as the user has a memory includes a data structure that serves as a look up table for searching and indexing music songs in the user's online music library); downloading digital media assets from said content provider to said set top box if the predetermined constraints are satisfied; and storing the downloaded digital media assets on the set top box for

subsequent viewing on a television or other display device (col. 8/line 38- 64 for user

home music library which downloading music online or over the Internet; and col. 9/line

45 to col. 10/line 21 as an example for delivering of ordering music based on the user's

constraint or authorization and/or based on some other constraints, see col. 13/lines 35-

52).

Conclusion

7.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Belknap et al. (U.S. Pat. No. 5,586,264) disclose the video optimized media streamer

with cache management.

8.   **Any response to this action should be mailed to:**
                Commissioner of Patents and Trademarks
                Washington, D.C. 20231

        or faxed to PTO New Central Fax number:
                (571) 273-8300, (for Technology Center 2600 only)

        Hand deliveries must be made to Customer Service Window,
        Randolph Building, 401 Dulany Street, Alexandria, VA 22314.

9.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Kieu-Oanh Bui whose telephone number is (571) 272-

7291. The examiner can normally be reached on Monday-Friday from 9:30 AM to 7:00

PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John W. Miller, can be reached at (571) 272-7353.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free).

/KIEU-OANH BUI/
Primary Examiner, Art Unit 2623

KB
March 13, 2008